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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000581

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SUBJECT: RADA VOTES TO MOVE UP PRESIDENTIAL ELECTION

Classified By: Political Counselor Colin Cleary for reasons 1.4(b,d)

SUMMARY

1. (C) The Rada on April 1 voted overwhelmingly to set October 25, 2009 as the date for presidential elections. Previously, a late December 2009 or mid January 2010 election date had been expected. Amendments to the constitution adopted after President Yushchenko took office in January 2005 left the door open for the Rada to select the October date. The President has vowed to challenge parliament's decision in court. END SUMMARY.

RADA MOVES UP ELECTION DATE

2. (U) In an unexpected move, the Rada voted April 1 to set October 25, 2009 as the date for the next presidential election. The vote was supported by four of the five parliamentary factions with 401 out of 422 MPs present voting in favor of the October date. The resolution garnered 174 votes from opposition Party of Regions (Regions), 155 votes from Prime Minister Tymoshenko's bloc (BYuT), 27 votes from the opposition Communist Party, 19 votes from Rada Speaker Lytvyn's bloc and 26 votes from the pro-coalition Our Ukraine-People's Self Defense bloc (OU-PSD). One MP each from Regions, the BYuT and Lytvyn blocs, and 46 MPs from the fractured OU-PSD bloc did not vote for the resolution. Previously, December 27, 2009 or January 17, 2010 were considered the most likely dates for the election. Although Party of Regions had publicly proposed October 25, 2009 last fall, numerous MPs and commentators dismissed it as unrealistic and possibly unconstitutional.

CONSTITUTIONAL UNCERTAINTY

3. (U) The wrangling over the date for presidential elections stems from different interpretations of Article 103 of the current constitution and whether amendments enacted after President Yushchenko assumed the presidency in January 2005 apply to his term in office. Article 85 of the constitution gives the Rada the right to set presidential election dates. Supporters of today's vote claim that the when Yushchenko was elected and inaugurated (January 23, 2005) the constitution then in force set the last Sunday in October of the president's fifth year in office as the official election date. They argue that later changes to the constitution did not grandfather Yushchenko in, and that October 25, 2009 is the correct date.

4. (U) Constitutional changes that came into effect in 2006 amended Article 103, moving presidential elections to the last Sunday of the last month of the President's fifth year in office. The amended article is also open to debate. Some MPs claim that December 2009 is the last full month of Yushchenko's term and therefore the election should be

December 27, 2009. Others claim that because Yushchenko was inaugurated on January 23, 2005, January 2010 is the last month of his presidency and the election should therefore take place on January 17, 2010.

REBUKE TO YUSHCHENKO, MOVE TO PREVENT EARLY RADA ELECTION

15. (C) Observers saw the vote on the October 25 date as a rebuke to Yushchenko, noting the vote garnered across-the-board support from the government coalition and the opposition. Party of Regions MP Nestor Shufrych, who led the effort to set the October date, told us that every effort should be made to remove Yushchenko from office as soon as possible. He criticized the President's handling of the economy and said that Ukraine cannot wait until spring 2010 for a change of leadership.

16. (C) BYuT MP Valeriy Pysarenko told us that Yushchenko was an obstacle for the Tymoshenko government and that BYuT would do whatever it could to get him out of office as soon as it could. He said that earlier presidential elections were also better for Tymoshenko's own presidential bid because the economic crisis was having a negative impact on her poll numbers. Pysarenko said that the October date would make it more difficult for Yushchenko to push for a pre-term parliamentary election because the constitution does not allow the Rada to be dissolved in the last six months of a president's term.

17. (C) OU-PSD pro-coalition MP Kyrylo Kulikov told us that

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the legal foundation of the Rada's decision was "dubious," but that with over 400 votes in parliament it cannot be ignored. He said that the primary motivation for the October date was to check a possible Yushchenko move for pre-term Rada elections. The resolution will get tied up in the courts and the election date could easily end up moved to January 2010, according to Kulikov.

YUSHCHENKO TO MOUNT COURT CHALLENGE

18. (C) The Presidential Secretariat harshly criticized the Rada decision as unconstitutional and promised to challenge the resolution in court. Pysarenko told us that BYuT expects Yushchenko to appeal the Rada's decision to either the Administrative Court or Constitutional Court, but that they are prepared to defend the resolution. Deputy Justice Minister Koriychuk claimed that the October 25 date is legal and predicted that the Constitutional Court would rule in the Rada's favor.

COMMENT

19. (C) Yushchenko may find it difficult to block the Rada's decision to hold the presidential election on October 25. It is rare in Ukraine's fractured political environment to find such broad support for any measure and underlines the extent of the opposition to Yushchenko. In addition, the courts, as they have in the past, may be loath to go against the political winds.

TAYLOR